NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* DISTRICT COURT IN AND FOR WATER DIVISION NO. 5 ET AL.

CERTIORARI TO THE SUPREME COURT OF COLORADO

No. 812. Argued March 2, 1971—Decided March 24, 1971

In this companion case to *U. S.* v. *District Court for Eagle County*, *ante*, p. —, the United States had been served with notice pursuant to 43 U. S. C. § 666 of a proceeding in state court for the adjudication of water rights affecting areas of the State in the drainage basin of the Colorado River system. In addition to its claim that § 666 does not apply to state court suits against the Government for adjudication of its reserved water rights, the Government contended that the state statutory proceedings involved in this case, which contemplated monthly proceedings before a water referee on water rights applications filed within a particular month, do not constitute general adjudications of water rights under § 666 because all the water users and all water rights on a stream system are not implicated in the referee's determinations. The Government's contentions were rejected by the state courts. *Held:*

1. The state court has jurisdiction to adjudicate the reserved water rights of the United States. *Eagle County*, *supra*. P. 2.

2. The state statutory proceedings are within the scope of § 666 and reach all claims in their totality, although the adjudication is made on a monthly basis. Pp. 2–3.

Affirmed.

MR. JUSTICE DOUGLAS delivered the opinion for a unanimous Court. MR. JUSTICE HARLAN, though joining in the opinion, filed a concurring statement.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 812.—October Term, 1970

United States, Petitioner, *v.* The District Court in and for Water Division No. 5, State of Colorado, et al. | On Writ of Certiorari to the Supreme Court of Colorado.

[March 24, 1971]

Mr. Justice Douglas delivered the opinion of the Court.

This is a companion case to the *Eagle County* case and involves an action brought under a different state statute [1] in the District Court of Colorado for Water Division No. 5.[2] That Court was given responsibility for water rights determinations affecting ". . . all lands in the State of Colorado in the drainage basins of the Colorado River and all of its tributaries arising in Colorado, with the exception of the Gunnison River," [3] which includes the area of the Eagle River system.

Notice was served on the United States pursuant to 43 U. S. C. § 666 (b) and it moved to quash the service. That motion was denied. A writ of prohibition was sought in the Supreme Court and it was also denied. The case is here on a petition for a writ of certiorari which we granted. 400 U. S. 940.

[1] The Colorado Water Rights Determination and Administration Act of 1969, Colo. Rev. Stat. § 148-21-1 *et seq.*, Colo. Rev. Stat. § 148-21-18 (3).

[2] The 1969 Act here in question abolished the 70 water districts previously existing and replaced them with seven water divisions.

[3] *Id.* § 148-21-8 (6).

The area covered by this suit includes vastly more water rights than those involved in the *Eagle County* case. The Forest Service administers four separate national forests in the area: the White River, Arapaho, Routt, and Grand Mesa-Uncompahgre. The Department of the Interior, through the Bureau of Reclamation, the National Park Service, the Bureau of Land Management, the Bureau of Mines, and the Bureau of Sport Fisheries and Wildlife, make use of water in Water Division No. 5 for national recreational and other purposes. The Department of the Navy administers certain Naval Petroleum and Oil Reserves which, if ever developed, would require water to accomplish the federal purpose for which the reservation was made.

The major issue—the scope of the consent to be sued provision in 43 U. S. C. § 666—has been covered in the *Eagle County* opinion and need not be repeated here.

It is emphasized, however, that the new procedures under the new Act are much more burdensome on the government than they were under the older Act. It is pointed out that the new statute contemplates monthly proceedings before a water referee on water rights applications. These proceedings, it is argued, do not constitute general adjudications of water rights because all the water users and all water rights on a stream system are not involved in the referee's determinations. The only water rights considered in the proceeding are those for which an application has been filed within a particular month. It is also said that the Act makes all water rights confirmed under the new procedure junior to those previously awarded.

It is argued from the those premises that the proceeding does not constitute a general adjudication which 43 U. S. C. § 666 contemplated As we said in the *Eagle County* case, the words "general adjudication" were used

in *Dugan* v. *Rank*, 372 U. S. 609, 618, to indicate that 43 U. S. C. § 666 does not cover consent by the United States to be sued in a private suit to determine its rights against a few claimants. The present suit, like the one in the *Eagle County* case, reaches all claims, perhaps month by month but inclusively in the totality; and, as we said in the other case, if there is a collision between prior adjudicated rights and reserved rights of the United States, the federal question can be preserved in the state decision and brought here for review.

Affirmed.

SUPREME COURT OF THE UNITED STATES

Nos. 87 AND 812.—OCTOBER TERM, 1970

United States, Petitioner, 87 *v.* The District Court in and for the County of Eagle and State of Colorado et al. United States, Petitioner, 812 *v.* The District Court in and for Water Division No. 5, State of Colorado, et al.	On Writ of Certiorari to the Supreme Court of Colorado.

[March 24, 1971]

MR. JUSTICE HARLAN, concurring.

I join in the opinions of the Court in these cases, explicitly disclaiming, however, the intimation of any view as to the existence and scope of the so-called "reserved water rights" of the United States, either in general or in the particular situations here involved.